Picus v. Wal-Mart Stores, Inc. et al Doc. 11

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DEL MONTE FOODS COMPANY

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MARGARET PICUS, an individual; on behalf of herself, and on behalf of others similarly situated, Plaintiffs, vs. WAL-MART STORES, INC.; MENU FOODS INC; DEL MONTE FOODS COMPANY; SUNSHINE MILLS, INC.; CHEMNUTRA, INC.; and DOES 1 through 100, inclusive, Defendants.	Case No.: CV-S-00682-PMP-LRL **AFFIDAVIT OF DAWN J. GROSSMAN IN SUPPORT OF DEL MONTE FOODS COMPANY'S PARTIAL MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED** **(ORAL ARGUMENT REQUESTED)** **[FED.R.CIV.P. 12(b)(6)]** Complaint filed: April 30, 2007 Removal Date: May 25, 2007

I, Dawn J. Grossman, being of full age, duly sworn and under oath, deposes and states as follows:

1. I am an attorney licensed to practice before all of the courts of the State of California, and am a member of the law firm of Cozen O'Connor, counsel of record for defendant DEL MONTE FOODS COMPANY (hereinafter "Del Monte"). This declaration is based upon my personal knowledge, except as to those matters stated on information and belief and, as to those matters, I believe them to be true. If called upon as a witness, I would

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and could competently testify as to the facts set forth herein.

2. Attached hereto as Exhibit "A" is a true and correct copy of Del Monte's recall notice entitled "Del Monte Pet Products Voluntarily Withdraws Specific Product Codes of Pet Treats and Wet Dog Food Products in the United States." This recall notice issued on or about April 6, 2007. On June 12, 2007, the recall notice was printed from Del Monte's website at the following URL address: www.delmonte.com/petfoodrecall.html for purposes of attachment to this declaration.

Sworn this 19 day of June, 2007 at San Diego, California under penalty of perjury under the laws of the United States and the State of California.

Dawn Grossman

DAWN J. GROSSMAN

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Del Monte Pet Products Voluntarily Withdraws Specific Product Codes of Pet Treats and Wet Dog Food Products in the United States

» Recalled Products in Canada Click Here

April 6, 2007—As a precautionary measure, Del Monte Pet Products is voluntarily recalling select product codes of its pet treat products sold under the *Jerky Treats®*, *Gravy Train® Beef Sticks* and *Pounce Meaty Morsels®* brands as well as select dog snack and wet dog food products sold under private label brands. A complete list of affected brands and products is below.

No other Del Monte Pet Products treats, biscuits or wet dog food products are impacted by this recall, and no Del Monte dry cat food, dry dog food, wet cat food or pouched pet foods are subject to this voluntary recall.

The Company took this voluntary recall action immediately after learning from the FDA that wheat gluten supplied to Del Monte Pet Products from a specific manufacturing facility in China contained melamine. Melamine is a substance not approved for use in food. The FDA made this finding as part of its ongoing investigation into the recent pet food recall. Del Monte Pet Products has proactively engaged and fully cooperated with the FDA since the start of its investigation.

Del Monte Pet Products has not used wheat gluten from this manufacturing facility in China in any other pet products except those described below. The adulterated ingredients were used in a limited production quantity over the last three months for those items identified by specific product codes below. This recall removes all Del Monte Pet Products with wheat gluten procured from this manufacturing facility from retail shelves. Del Monte did not use product from this supplier prior to the recall period in question and has since discontinued sourcing product from this manufacturing facility.

Consumers should discontinue feeding the products with the Product Codes detailed below to their pets.

Del Monte Pet Products are 100% guaranteed and all voluntarily recalled products will be refunded.

Del Monte Pet Products customers can contact our Consumer Hotline at (800) 949-3799 for further information about the recall and for instructions on obtaining a product refund. Consumers can also click on the **"Contact Us"** button and submit the Contact Us form, including UPC number, product name, Best By Date, and manufacturing code information (located under the Best By date). Consumers may also write to us at:
Del Monte
P.O. Box 80
Pittsburgh PA 15230-0080

Following is a COMPLETE and UPDATED list of Del Monte Pet Products and Best Buy Dates that have been voluntarily recalled in the United States.

BRANDED	**Production Code/Best By Date**					
Jerky Treats Beef Flavor Dog Snacks*	Code:	TP7B06	TP7B07	TP7B08	TP7B09	TP7B
Jerky Treats No Wheat Beef (production code TP7B06) is not part of the recall	Best By:	Aug 06 08	Aug 07 08	Aug 08 08	Aug 09 08	Aug 1
	Code:	TP7B15	TP7B16	TP7CO5	TP7C06	
	Best By:	Aug 15 08	Aug 16 08	Sep 02 08	Sep 03 08	
Gravy Train Beef Sticks Dog Snacks	Code:	TP7B19	TP7B20			
	Best By:	Aug 19 08	Aug 20 08			
Pounce Meaty Morsels Moist Chicken Flavor Cat Treats	Code:	TP7C12				
	Best By:	Sep 09 08				

PRIVATE LABEL	Production Code/Best By Date					
Ol' Roy Beef Flavor Jerky Strips Dog Treats	Code:	TP7B06	TP7B07	TP7B08	TP7C05	TP7C
	Best By:	Aug 06 08	Aug 07 08	Aug 08 08	Sep 02 08	Sep 0
	Code:	TP7C07	TP7C08			
	Best By:	Sep 04 08	Sep 05 08			
Ol' Roy Beef Flavor Snack Sticks Dog Treats	Code:	TP7B19	TP7B20	TP7B21	TP7C08	TP7C
	Best By:	Aug 19 08	Aug 20 08	Aug 21 08	Sep 05 08	Sep 0
	Code:	TP7C10				
	Best By:	Sep 07 08				
Ol' Roy with Beef Hearty Cuts in Gravy Dog Food	Code:	BC6M21				
	Best By:	Dec 21 09				
Ol' Roy with Beef Hearty Strips in Gravy Dog Food	Code:	BC7A19				
	Best By:	Jan 19 10				
Ol' Roy Country Stew Hearty Cuts in Gravy Dog Food	Code:	BC6M15				
	Best By:	Dec 15 09				
Dollar General Beef Flavored Jerky Strips Dog Treats	Code:	TP7CO5	TP7C06	TP7C07	TP7C08	
	Best By:	Sep 02 08	Sep 03 08	Sep 04 08	Sep 05 08	
Dollar General Beef Flavored Beef Sticks Dog Treats	Code:	TP7B20	TP7B21	TP7C08	TP7C09	TP7C
	Best By:	Aug 20 08	Aug 21 08	Sep 05 08	Sep 06 08	Sep 0
Happy Tails Beef Flavor Jerky Strips	Code:	TP7B08	TP7B09			
	Best By:	Aug 08 08	Aug 09 08			
Happy Tails Meaty Cuts with Beef in Gravy Dog Food	Code:	BC7A29				
	Best By:	Jan 29 10				
Happy Tails Beef Flavor Beef Sticks	Code:	TP7C08	TP7C09			
	Best By:	Sep 05 08	Sep 06 08			

Recalled Products in Canada

DLM Foods Canada Corp. Voluntarily Withdraws *Jerky Treats* Dog Snacks Beef Flavour with the Best Before Date of 16.08.08

TORONTO, April 2, 2007 - As a precautionary measure, DLM Foods Canada Corp. is voluntarily withdrawing *Jerky Treats*® Dog Treats Beef Flavour with the best before date of 16.08.08. Consumers should discontinue feeding this product and return affected products to their store for a refund. No other DLM Foods Canada Corp. products are subject to this voluntary withdrawal.

The Company took this voluntary withdrawal action after learning from the U.S. Food & Drug Administration (FDA) that wheat gluten supplied to DLM Foods Canada Corp. from a specific manufacturing facility in China contained melamine. Melamine is a substance not approved for use in food in the United States. The FDA made this finding as part of its ongoing investigation into the recent pet food recall in the United States. DLM Foods Canada Corp. conferred with the Canadian Food Inspection Agency today to coordinate the details of this voluntary withdrawal as it applied to the Canadian market.

The adulteration occurred in a limited production quantity indicated by the one best before date of *Jerky Treats* Dog Treats Beef Flavour product line mentioned above. This withdrawal removes all DLM Foods Canada Corp. pet products with wheat gluten procured from this manufacturing facility from retail shelves.

No other DLM Foods Canada Corp. products are subject to this voluntary withdrawal. The affected products comprise less than one-tenth of one percent of DLM Foods Canada Corp. annual pet food and pet treat production.

DLM Foods Canada Corp. has not used wheat gluten from this manufacturing facility in China in any other pet products except those described above.

DLM Foods Canada Corp. products are 100% guaranteed and all returned product will be refunded. For further information about DLM Foods Canada Corp. consumers can contact our Consumer Affairs at 1-866-657-6929.

As part of the pet community, we value the health and well-being of pets, and we deeply regret this situation. We will continue to take any and all actions necessary to ensure the quality and safety of our products.